

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1359

AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-6-12-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3.5. (a) As used in this chapter, "residential real estate transaction" includes:**

- (1) mortgage lending practices;**
- (2) real estate appraisals; and**
- (3) other practices;**

**performed or undertaken in connection with a single family residential mortgage transaction or the refinancing of a single family residential mortgage transaction.**

**(b) Not later than July 1, 2008, the unit shall:**

- (1) establish a new toll free telephone number; or**
- (2) designate an existing toll free telephone number operated or sponsored by the office of the attorney general;**

**to receive calls from persons having information about suspected fraudulent residential real estate transactions.**

**(c) The toll free telephone number required by this section shall be staffed by:**

- (1) employees or investigators of the unit who have knowledge of the laws concerning residential real estate transactions;**
- (2) representatives of any of the entities described in section**

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4(a)(8) through 4(a)(10) of this chapter who have knowledge of the laws concerning residential real estate transactions; or (3) a combination of persons described in subdivisions (1) and (2).

The attorney general shall designate persons to staff the toll free telephone number as required by this subsection.

(d) Unless otherwise prohibited by law, the unit shall ensure that information received from callers to the toll free telephone number is shared with any entity described in section 4 of this chapter that has jurisdiction over the matter not later than fifteen (15) business days after the date the unit determines the appropriate entity to which the information should be referred. The unit shall establish uniform procedures for:

- (1) responding to calls received;
- (2) protecting:
  - (A) the anonymity of callers who wish to report information anonymously; or
  - (B) the identity of callers who request that their identity not be disclosed;
- (3) documenting and verifying information reported by callers; and
- (4) transmitting reported information to the appropriate entities described in section 4 of this chapter within the time required by this subsection.

(e) The unit shall publicize the availability of the toll free telephone number established under this section in a manner reasonably designed to reach members of the public.

SECTION 2. IC 4-6-12-8, AS AMENDED BY P.L.181-2006, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. The unit shall cooperate with the Indiana housing and community development authority in the development and implementation of the home ownership education programs established under ~~IC 5-20-1-4(f)~~ **IC 5-20-1-4(d)**.

SECTION 3. IC 5-20-1-4, AS AMENDED BY P.L.99-2007, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) The authority has all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the power:

- (1) to make or participate in the making of construction loans to sponsors of for multiple family residential housing that is federally assisted or assisted by a government sponsored enterprise, such as the Federal National Mortgage Association;

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the Federal Home Loan Mortgage Corporation, or the Federal Agricultural Mortgage Corporation, the Federal Home Loan Bank, and other similar entities under terms that are approved by the authority;

(2) to make or participate in the making of mortgage loans to sponsors of for multiple family residential housing that is federally assisted or assisted by a government sponsored enterprise, such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Agricultural Mortgage Corporation, the Federal Home Loan Bank, and other similar entities under terms that are approved by the authority;

(3) to purchase or participate in the purchase from mortgage lenders of mortgage loans made to persons of low and moderate income for residential housing;

(4) to make loans to mortgage lenders for the purpose of furnishing funds to such mortgage lenders to be used for making mortgage loans for persons and families of low and moderate income. However, the obligation to repay loans to mortgage lenders shall be general obligations of the respective mortgage lenders and shall bear such date or dates, shall mature at such time or times, shall be evidenced by such note, bond, or other certificate of indebtedness, shall be subject to prepayment, and shall contain such other provisions consistent with the purposes of this chapter as the authority shall by rule or resolution determine;

(5) to collect and pay reasonable fees and charges in connection with making, purchasing, and servicing of its loans, notes, bonds, commitments, and other evidences of indebtedness;

(6) to acquire real property, or any interest in real property, by conveyance, including purchase in lieu of foreclosure, or foreclosure, to own, manage, operate, hold, clear, improve, and rehabilitate such real property and sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purposes of the authority;

(7) to sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction loan, a land development loan, a mortgage loan, or a loan of any type permitted by this chapter;

(8) to procure insurance against any loss in connection with its operations in such amounts and from such insurers as it may deem

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necessary or desirable;

(9) to consent, subject to the provisions of any contract with noteholders or bondholders which may then exist, whenever it deems it necessary or desirable in the fulfillment of its purposes to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, loan to lender, or contract or agreement of any kind to which the authority is a party;

(10) to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing;

(11) to include in any borrowing such amounts as may be deemed necessary by the authority to pay financing charges, interest on the obligations (for a period not exceeding the period of construction and a reasonable time thereafter or if the housing is completed, two (2) years from the date of issue of the obligations), consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) to make and publish rules respecting its lending programs and such other rules as are necessary to effectuate the purposes of this chapter;

(13) to provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents and potential residents, including housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;

(14) to promote research and development in scientific methods of constructing low cost residential housing of high durability;

(15) to encourage community organizations to participate in residential housing development;

(16) to make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, limited liability company, or other organization or entity necessary or convenient to accomplish the purposes of this chapter;

(17) to accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;

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(18) to sue and be sued in its own name, plead and be impleaded;  
 (19) to maintain an office in the city of Indianapolis and at such other place or places as it may determine;

(20) to adopt an official seal and alter the same at pleasure;

(21) to adopt and from time to time amend and repeal bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties;

(22) to employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;

(23) notwithstanding IC 5-13, but subject to the requirements of any trust agreement entered into by the authority, to invest:

(A) the authority's money, funds, and accounts;

(B) any money, funds, and accounts in the authority's custody;  
 and

(C) proceeds of bonds or notes;

in the manner provided by an investment policy established by resolution of the authority;

(24) to make or participate in the making of construction loans, mortgage loans, or both, to individuals, partnerships, limited liability companies, corporations, and organizations for the construction of residential facilities for individuals with a developmental disability or for individuals with a mental illness or for the acquisition or renovation, or both, of a facility to make it suitable for use as a new residential facility for individuals with a developmental disability or for individuals with a mental illness;

(25) to make or participate in the making of construction and mortgage loans to individuals, partnerships, corporations, limited liability companies, and organizations for the construction, rehabilitation, or acquisition of residential facilities for children;

(26) to purchase or participate in the purchase of mortgage loans from:

(A) public utilities (as defined in IC 8-1-2-1); or

(B) municipally owned gas utility systems organized under IC 8-1.5;

if those mortgage loans were made for the purpose of insulating and otherwise weatherizing single family residences in order to conserve energy used to heat and cool those residences;

(27) to provide financial assistance to mutual housing

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associations (IC 5-20-3) in the form of grants, loans, or a combination of grants and loans for the development of housing for low and moderate income families;

(28) to service mortgage loans made or acquired by the authority and to impose and collect reasonable fees and charges in connection with such servicing;

(29) subject to the authority's investment policy, to enter into swap agreements (as defined in IC 8-9.5-9-4) in accordance with IC 8-9.5-9-5 and IC 8-9.5-9-7;

(30) to promote and foster community revitalization through community services and real estate development;

(31) to coordinate and establish linkages between governmental and other social services programs to ensure the effective delivery of services to low income individuals;

(32) to cooperate with local housing officials and plan commissions in the development of projects that the officials or commissions have under consideration;

(33) to take actions necessary to implement its powers that the authority determines to be appropriate and necessary to ensure the availability of state or federal financial assistance; and

(34) to administer any program or money designated by the state or available from the federal government or other sources that is consistent with the authority's powers and duties.

The omission of a power from the list in this subsection does not imply that the authority lacks that power. The authority may exercise any power that is not listed in this subsection but is consistent with the powers listed in this subsection to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by another statute.

(b) The authority shall ~~structure and administer any program conducted~~ **ensure that a mortgage loan acquired by the authority under subsection (a)(3) or made by a mortgage lender with funds provided by the authority under subsection (a)(4) in order to assure that no mortgage loan shall** ~~is not~~ knowingly be made to a person whose adjusted family income, ~~shall exceed as determined by the authority, exceeds~~ one hundred twenty-five percent (125%) of the median income for the geographic area ~~within which the person resides and at least forty percent (40%) of the mortgage loans so financed shall be for persons whose adjusted family income shall be below eighty percent (80%) of the median income for such area. involved.~~ **However, if the authority determines that additional encouragement is needed for the development of the geographic**

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area involved, a mortgage loan acquired or made under subsection (a)(3) or (a)(4) may be made to a person whose adjusted family income, as determined by the authority, does not exceed one hundred forty percent (140%) of the median income for the geographic area involved. The authority shall establish procedures that the authority determines are appropriate to structure and administer any program conducted under subsection (a)(3) or (a)(4) for the purpose of acquiring or making mortgage loans to persons of low or moderate income. In determining what constitutes low income, moderate income, or median income for purposes of any program conducted under subsection (a)(3) or (a)(4), the authority shall consider:

- (1) the appropriate geographic area in which to measure income levels; and
- (2) the appropriate method of calculating low income, moderate income, or median income levels including:
  - (A) sources of;
  - (B) exclusions from; and
  - (C) adjustments to;
 income.

(c) In addition to the powers set forth in subsection (a), the authority may, with the proceeds of bonds and notes sold to retirement plans covered by IC 5-10-1.7, structure and administer a program of purchasing or participating in the purchasing from mortgage lenders of mortgage loans made to qualified members of retirement plans and other individuals. The authority shall structure and administer any program conducted under this subsection to assure that:

- (1) each mortgage loan is made as a first mortgage loan for real property:
  - (A) that is a single family dwelling, including a condominium or townhouse, located in Indiana;
  - (B) for a purchase price of not more than ninety-five thousand dollars (\$95,000);
  - (C) to be used as the purchaser's principal residence; and
  - (D) for which the purchaser has made a down payment in an amount determined by the authority;
- (2) no mortgage loan exceeds seventy-five thousand dollars (\$75,000);
- (3) any bonds or notes issued which are backed by mortgage loans purchased by the authority under this subsection shall be offered for sale to the retirement plans covered by IC 5-10-1.7; and
- (4) qualified members of a retirement plan shall be given

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preference with respect to the mortgage loans that in the aggregate do not exceed the amount invested by their retirement plan in bonds and notes issued by the authority that are backed by mortgage loans purchased by the authority under this subsection:

(d) As used in this section, "a qualified member of a retirement plan" means an active or retired member:

(1) of a retirement plan covered by IC 5-10-1.7 that has invested in bonds and notes issued by the authority that are backed by mortgage loans purchased by the authority under subsection (c); and

(2) who for a minimum of two (2) years preceding the member's application for a mortgage loan has:

(A) been a full-time state employee; teacher; judge; police officer; or firefighter;

(B) been a full-time employee of a political subdivision participating in the public employees' retirement fund;

(C) been receiving retirement benefits from the retirement plan; or

(D) a combination of employment and receipt of retirement benefits equaling at least two (2) years.

(e) (c) The authority, when directed by the governor, shall administer programs and funds under 42 U.S.C. 1437 et seq.

(f) (d) The authority shall identify, promote, assist, and fund home ownership education programs conducted throughout Indiana by nonprofit counseling agencies certified by the authority using funds appropriated under section 27 of this chapter. The attorney general and the entities listed in IC 4-6-12-4(a)(1) through IC 4-6-12-4(a)(10) shall cooperate with the authority in implementing this subsection.

SECTION 4. IC 5-20-1-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4.5. (a) As used in this section, "person with a disability" means a person who, by reason of physical, mental, or emotional defect or infirmity, whether congenital or acquired by accident, injury, or disease, is totally or partially prevented from achieving the fullest attainable physical, social, economic, mental, and vocational participation in the normal process of living. "special needs populations" includes the following:

- (1) Persons with physical or developmental disabilities.
- (2) Persons with mental impairments.
- (3) Single parent households.
- (4) Victims of domestic violence.
- (5) Abused children.
- (6) Persons with chemical addictions.



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**(7) Homeless persons.**

**(8) The elderly.**

(b) As used in this section, "qualified building" means a building:

- (1) that is used or will be used to provide residential housing for ~~persons with disabilities~~, **special needs populations**; and
- (2) for which a taxpayer is eligible to claim a low income housing credit under 26 U.S.C. 42.

(c) Subject to subsection (d), the authority shall allocate to qualified buildings at least ten percent (10%) of the total dollar amount of federal low income housing credits allocated to the authority under 26 U.S.C. 42. The authority shall allocate credits under this section based on the proportionate amount of a qualified building that is used to provide residential housing for ~~persons with disabilities~~, **special needs populations**, as determined by the authority.

(d) The authority shall hold available the allocation made under subsection (c) for qualified buildings through October 31 of each calendar year. Beginning November 1 of each calendar year, any part of the allocation that remains unassigned shall be available for any appropriate use under 26 U.S.C. 42.

SECTION 5. IC 5-20-1-8, AS AMENDED BY P.L.235-2005, SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) Subject to the approval of the ~~governor~~, **public finance director appointed under IC 4-4-11-9**, the authority is hereby authorized to issue bonds or notes, or a combination thereof, to carry out and effectuate its purposes and powers. The principal of, and the interest on, such bonds or notes shall be payable solely from the funds provided for such payment in this chapter. The authority may secure the repayment of such bonds and notes by the pledge of mortgages and notes of others, revenues derived from operations and loan repayments, the proceeds of its bonds, and any available revenues or assets of the authority. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the authority, at such price or prices and under such terms and conditions as may be determined by the authority. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the authority. Notes shall mature at such time or times not exceeding ten (10) years from their date or dates, and bonds shall mature at such time or times not exceeding forty-five (45) years from their date or dates, as may be determined by the authority. The authority shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and

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interest, which may be any bank or trust company within or outside the state. In case any officer whose signature, or a facsimile of whose signature, shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if ~~he~~ **the person** had remained in office until such delivery. The authority may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the authority authorizing the sale of its bonds or notes, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the authority shall determine to be for the best interest of the authority and to best effectuate the purposes of this chapter.

(b) The proceeds of any bonds or notes shall be used solely for the purposes for which they are issued. The proceeds shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement securing the same.

(c) Prior to the preparation of definitive bonds, the authority may, under like restrictions and subject to the approval of the ~~governor~~, **public finance director appointed under IC 4-4-11-9**, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(d) The authority shall cooperate with and use the assistance of the Indiana finance authority established under IC 4-4-11 in the issuance of the bonds or notes.

SECTION 6. IC 5-20-1-18, AS AMENDED BY P.L.235-2005, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. The authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the ~~governor~~, **public finance director appointed under IC 4-4-11-9**, the budget committee, and the general assembly. An annual report submitted under this section to the general assembly

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must be in an electronic format under IC 5-14-6. The report shall set forth a complete operating and financial statement of the authority during such year, and a copy of such report shall be available to inspection by the public at the Indianapolis office of the authority. The authority shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available money of the authority.

SECTION 7. IC 5-20-1-27, AS AMENDED BY P.L.181-2006, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. (a) The home ownership education account within the state general fund is established to support the home ownership education programs established under section ~~4(f)~~ **4(d)** of this chapter. The account is administered by the authority.

(b) The home ownership education account consists of:

- (1) fees collected under IC 24-9-9; **and**
- (2) civil penalties imposed and collected under:**
  - (A) IC 6-1.1-12-43(g)(2)(B); or**
  - (B) IC 27-7-3-15.5(e).**

(c) The expenses of administering the home ownership education account shall be paid from money in the ~~fund~~ **account**.

(d) The treasurer of state shall invest the money in the home ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 8. IC 5-20-3-4, AS AMENDED BY P.L.181-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A mutual housing association may be established as a nonprofit corporation incorporated under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17 to prevent and eliminate neighborhood deterioration and to preserve neighborhood stability by:

- (1) providing high quality, long term housing for families of low and moderate income; and
- (2) affording community and residential involvement in the provision of that housing.

(b) The articles of incorporation of a mutual housing association ~~must meet the requirements of the Indiana housing and community development authority under IC 5-20-1-6 and~~ must be approved by the authority.

(c) The articles of incorporation of a mutual housing association must include a provision that provides that if the mutual housing

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association dissolves, is involved in a bankruptcy proceeding, or otherwise disposes of its physical properties, the association may only transfer the assets to another entity that provides high quality long term housing for families of low and moderate income.

SECTION 9. IC 6-1.1-12-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 43. (a) For purposes of this section:

- (1) "benefit" refers to:
  - (A) a deduction under section 1, 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, or 34 of this chapter; or
  - (B) the homestead credit under IC 6-1.1-20.9-2;
- (2) "closing agent" means a person that closes a transaction;
- (3) "customer" means an individual who obtains a loan in a transaction; and
- (4) "transaction" means a single family residential:
  - (A) first lien purchase money mortgage transaction; or
  - (B) refinancing transaction.

(b) Before closing a transaction after December 31, 2004, a closing agent must provide to the customer the form referred to in subsection (c).

(c) Before June 1, 2004, the department of local government finance shall prescribe the form to be provided by closing agents to customers under subsection (b). The department shall make the form available to closing agents, county assessors, county auditors, and county treasurers in hard copy and electronic form. County assessors, county auditors, and county treasurers shall make the form available to the general public. The form must:

- (1) on one (1) side:
    - (A) list each benefit;
    - (B) list the eligibility criteria for each benefit; and
    - (C) indicate that a new application for a deduction under section 1 of this chapter is required when residential real property is refinanced;
  - (2) on the other side indicate:
    - (A) each action by; and
    - (B) each type of documentation from;
 the customer required to file for each benefit; and
  - (3) be printed in one (1) of two (2) or more colors prescribed by the department of local government finance that distinguish the form from other documents typically used in a closing referred to in subsection (b).
- (d) A closing agent:

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- (1) may reproduce the form referred to in subsection (c);
- (2) in reproducing the form, must use a print color prescribed by the department of local government finance; and
- (3) is not responsible for the content of the form referred to in subsection (c) and shall be held harmless by the department of local government finance from any liability for the content of the form.

**(e) This subsection applies to a transaction that is closed after December 31, 2009. In addition to providing the customer the form described in subsection (c) before closing the transaction, a closing agent shall do the following as soon as possible after the closing, and within the time prescribed by the department of insurance under IC 27-7-3-15.5:**

- (1) To the extent determinable, input the information described in IC 27-7-3-15.5(c)(2) into the system maintained by the department of insurance under IC 27-7-3-15.5.**
- (2) Submit the form described in IC 27-7-3-15.5(c) to the data base described in IC 27-7-3-15.5(c)(2)(D).**

**(f) A closing agent to which this section applies shall document its the closing agent's compliance with this section with respect to each transaction in the form of verification of compliance signed by the customer.**

**(g) Subject to IC 27-7-3-15.5(d), a closing agent is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the closing agent fails to comply with this section with respect to a customer. The penalty:**

- (1) may be enforced by the state agency that has administrative jurisdiction over the closing agent in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and
- (2) shall be paid into:
  - (A) the property tax replacement fund, if the closing agent fails to comply with subsection (b); or**
  - (B) the home ownership education account established by IC 5-20-1-27, if the closing agent fails to comply with subsection (e) in a transaction that is closed after December 31, 2009.**

**(h) A closing agent is not liable for any other damages claimed by a customer because of:**

- (1) the closing agent's mere failure to provide the appropriate document to the customer under subsection (b); or**
- (2) with respect to a transaction that is closed after December**

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**31, 2009, the closing agent's failure to input the information or submit the form described in subsection (e).**

~~(g)~~ (i) The state agency that has administrative jurisdiction over a closing agent shall:

- (1) examine the closing agent to determine compliance with this section; and
- (2) impose and collect penalties under subsection ~~(f)~~ (g).

SECTION 10. IC 23-2-5-3, AS AMENDED BY P.L.230-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to:

- (1) engage in origination activities on behalf of a licensee; **or**
- (2) **act as a principal manager on behalf of a licensee.**

~~(b)~~ As used in this chapter, "creditor" means a person:

- ~~(1) that loans funds of the person in connection with a loan; and~~
- ~~(2) to whom the loan is initially payable on the face of the note or contract evidencing the loan.~~

~~(c)~~ (b) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

~~(d)~~ (c) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

~~(e)~~ (d) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

- (1) any supervised financial organization (as defined in IC 24-4.5-1-301(20)), including a bank, savings bank, trust company, savings association, or credit union;
- (2) any other financial institution that is:
  - (A) regulated by any agency of the United States or any state; and
  - (B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;
- (3) any insurance company; ~~or~~
- (4) any person arranging financing for the sale of the person's product; **or**
- (5) **a creditor that is licensed under IC 24-4.4-2-402.**

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~~(f)~~ (e) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

~~(g)~~ (f) As used in this chapter, "origination activities" means communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms.

~~(h)~~ (g) As used in this chapter, "originator" means a person engaged in origination activities. The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection ~~(e)~~: (d).

~~(i)~~ (h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

~~(j)~~ (i) As used in this chapter, "registrant" means an individual who is registered:

- (1) to engage in origination activities under this chapter; or
- (2) as a principal manager.

~~(k)~~ (j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

~~(l)~~ (k) As used in this chapter, "principal manager" means an individual who:

- (1) has at least three (3) years of experience:
  - (A) as a loan broker; or
  - (B) in financial services;
 that is acceptable to the commissioner; and
- (2) is principally responsible for the supervision and management of the employees and business affairs of a licensee.

**(l) As used in this chapter, "personal information" includes any of the following:**

- (1) An individual's first and last names or first initial and last name.**
- (2) Any of the following data elements:**
  - (A) A Social Security number.**
  - (B) A driver's license number.**
  - (C) A state identification card number.**
  - (D) A credit card number.**
  - (E) A financial account number or debit card number in combination with a security code, password, or access code**

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that would permit access to the person's account.

(3) With respect to an individual, any of the following:

(A) Address.

(B) Telephone number.

(C) Information concerning the individual's:

(i) income or other compensation;

(ii) credit history;

(iii) credit score;

(iv) assets;

(v) liabilities; or

(vi) employment history.

(m) As used in this chapter, personal information is "encrypted" if the personal information:

(1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key; or

(2) is secured by another method that renders the personal information unreadable or unusable.

(n) As used in this chapter, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:

(1) a Social Security number;

(2) a driver's license number;

(3) a state identification number; or

(4) an account number;

are accessible as part of the personal information.

SECTION 11. IC 23-2-5-4, AS AMENDED BY P.L.230-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) **A person may not engage in the loan brokerage business in Indiana unless the person first obtains a license from the commissioner.** Any person desiring to engage or continue in the loan brokerage business shall apply to the commissioner for a license under this chapter.

(b) **An individual may not perform origination activities in Indiana on behalf of a person licensed or required to be licensed under this chapter unless the individual first obtains a certificate of registration from the commissioner.** An individual desiring ~~to be~~ employed by a licensee to engage in origination activities **on behalf of a person licensed or required to be licensed under this chapter** shall apply to the commissioner for registration under this chapter.

(c) **An individual may not act as a principal manager on behalf**

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of a person licensed or required to be licensed under this chapter unless the individual first obtains a certificate of registration from the commissioner. Any individual desiring to be employed by a licensee act as a principal manager on behalf of a person licensed or required to be licensed under this chapter shall apply to the commissioner for registration under this chapter.

(d) The commissioner may request evidence of compliance with this section at any of the following times:

(1) The time of application for an initial:

(A) license; or

(B) certificate of registration.

(2) The time of renewal of a license or certificate of registration.

(3) Any other time considered necessary by the commissioner.

(e) For purposes of subsection (d), evidence of compliance with this section must include a criminal background check, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.

SECTION 12. IC 23-2-5-5, AS AMENDED BY P.L.230-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) An application for license or renewal of a license must contain:

(1) consent to service of process under subsection (h);

(2) evidence of the bond required in subsection (e);

(3) an application fee of four hundred dollars (\$400), plus two hundred dollars (\$200) for each ultimate equitable owner;

(4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the commissioner under subsection ~~(f)~~; (i);

(5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;

(6) the name and registration number for each originator to be employed by the licensee;

(7) the name and registration number for each principal manager; and

(8) for each ultimate equitable owner, the following information:

~~(1)~~ (A) The name of the ultimate equitable owner.

~~(2)~~ (B) The address of the ultimate equitable owner, including

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the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.

~~(3)~~ **(C)** The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.

~~(4)~~ **(D)** The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for registration as an originator shall be made on a registration form prescribed by the commissioner. The application must include the following information for the individual that seeks to be registered as an originator:

- (1) The name of the individual.
- (2) The home address of the individual.
- (3) The home telephone number of the individual.
- (4) The individual's Social Security number and date of birth.
- (5) The name of the:
  - (A) licensee; or
  - (B) applicant for licensure;
 for whom the individual seeks to be employed as an originator.
- (6) Consent to service of process under subsection (h).
- (7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
- (8) An application fee of one hundred dollars (\$100).
- (9) All registration numbers previously issued to the individual under this chapter, if applicable.

(c) An application for registration as a principal manager shall be made on a registration form prescribed by the commissioner. The application must include the following information for the individual who seeks to be registered as a principal manager:

- (1) The name of the individual.
- (2) The home address of the individual.
- (3) The home telephone number of the individual.
- (4) The individual's Social Security number and date of birth.
- (5) The name of the:
  - (A) licensee; or
  - (B) applicant for licensure;
 for whom the individual seeks to be employed as a principal manager.
- (6) Consent to service of process under subsection (h).
- (7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.

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(8) Evidence that the individual has at least three (3) years of experience in the:

(A) loan brokerage; or

(B) financial services;  
business.

(9) An application fee of two hundred dollars (\$200).

(10) All registration numbers previously issued to the individual, if applicable.

(d) The commissioner shall require an applicant for registration as:

(1) an originator under subsection (b); or

(2) a principal manager under subsection (c);

to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner.

(e) A licensee must maintain a bond satisfactory to the commissioner in the amount of fifty thousand dollars (\$50,000), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(f) The commissioner shall issue a license and license number to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration and registration number authorizing the registrant to:

(1) engage in origination activities; or

(2) act as a principal manager;

whichever applies.

(g) Licenses and initial certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance.

(h) Every applicant for licensure or registration or for renewal of a license or a registration shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(i) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(j) Whenever an initial or a renewal application for a license or registration is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

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(k) The commissioner shall require each:

(1) equitable owner; ~~and~~

**(2) individual described in subsection (a)(4); and**

~~(2)~~ **(3) applicant for registration as:**

(A) an originator; or

(B) a principal manager;

to ~~undergo~~ **submit fingerprints for a national criminal history background check at the expense of the (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the applicant should be denied licensure or registration under this chapter for any reason set forth in section 10(c) of this chapter. The equitable owner, individual described in subsection (a)(4), or applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check described in this subsection to any private entity.**

(~~h~~) The commissioner may check the qualifications, background, licensing status, and service history of each:

(~~1~~) equitable owner; and

~~(2)~~ applicant for registration as:

(A) an originator; or

~~(B)~~ a principal manager;

by accessing, upon availability, a multistate automated licensing system for mortgage brokers and originators, including the National Mortgage Licensing Database proposed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The equitable owner or the applicant shall pay any fees or costs associated with a check conducted under this subsection.

SECTION 13. IC 23-2-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. A licensee may not continue engaging in the loan brokerage business unless the licensee's license is renewed biennially. A registrant may not continue:

**(1) engaging in origination activities; or**

**(2) acting as a principal manager;**

unless the registrant's certificate of registration is renewed biennially. A licensee shall renew its license ~~and the certificates of registration of its registrant employees~~ by filing with the commissioner, at least thirty (30) days before the expiration of the ~~registration; license~~, an application containing any information the commissioner may require to indicate any material change from the information contained in the

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applicant's original application or any previous application. **A registrant may renew the registrant's certificate of registration by filing with the commissioner, at least thirty (30) days before the expiration of the registration, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.**

SECTION 14. IC 23-2-5-10, AS AMENDED BY P.L.230-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent and, if the subject of the order or notice is a registrant, the licensee for whom the registrant is employed:

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set down for a hearing to commence within fifteen (15) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny **an application for an initial or a renewal license or registration, and may** suspend or revoke the license of a licensee or the registration of a registrant **if the applicant,** the licensee, the registrant, or an ultimate equitable owner of **an applicant or of** a licensee:

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- (1) fails to maintain the bond required under section 5 of this chapter;
- (2) has, within the most recent ten (10) years:
  - (A) been the subject of an adjudication or a determination by:
    - (i) a court with jurisdiction; or
    - (ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;
  - in Indiana or in any other jurisdiction; and
  - (B) been found, after notice and opportunity for hearing, to have violated the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal laws of Indiana or any other jurisdiction;
- (3) has:
  - (A) been denied the right to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry; or
  - (B) had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended; by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization;
- (4) is insolvent;
- (5) has violated any provision of this chapter;
- (6) has knowingly filed with the commissioner any document or statement that:
  - (A) contains a false representation of a material fact;
  - (B) fails to state a material fact; or
  - (C) contains a representation that becomes false after the filing but during the term of a license or certificate of registration as provided in subsection (i);
- (7) has:
  - (A) been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime involving fraud or deceit; or
  - (B) had a felony conviction (as defined in IC 35-50-2-1(b)) within five (5) years before the date of the application, renewal, or review;
- (8) if the person is a licensee or principal manager, has failed to reasonably supervise the person's originators or employees to ensure their compliance with this chapter;
- (9) is on the most recent tax warrant list supplied to the

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commissioner by the department of state revenue; or  
 (10) has engaged in dishonest or unethical practices in the loan broker business, as determined by the commissioner.

(d) The commissioner may do either of the following:

(1) Censure:

- (A) a licensee;
- (B) an officer, a director, or an ultimate equitable owner of a licensee;
- (C) a registrant; or
- (D) any other person;

who violates or causes a violation of this chapter.

(2) Permanently bar any person described in subdivision (1) from being:

- (A) licensed or registered under this chapter; or
- (B) employed by or affiliated with a person licensed or registered under this chapter;

if the person violates or causes a violation of this chapter.

(e) The commissioner may not enter a final order:

- (1) denying, suspending, or revoking the license of a licensee or the registration of a registrant; or
- (2) imposing other sanctions;

without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license or certificate of registration pending final determination of any proceeding under this section or before any proceeding is initiated under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that the summary order has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence within fifteen (15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

(f) IC 4-21.5 does not apply to a proceeding under this section.

(g) If a registrant seeks to transfer the registrant's registration to another licensee who desires to have the registrant engage in origination activities or serve as a principal manager, whichever

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applies, the registrant shall, before the registrant conducts origination activities or serves as a principal manager for the new employer, submit to the commissioner, on a form prescribed by the commissioner, a registration application, as required by section 5 of this chapter.

(h) If the employment of a registrant is terminated, whether:

- (1) voluntarily by the registrant; or
- (2) by the licensee employing the registrant;

the licensee that employed the registrant shall, not later than five (5) days after the termination, notify the commissioner of the termination and the reasons for the termination.

(i) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

- (1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or
- (2) would not qualify for licensure or registration under this chapter as a result of the change in a material fact or statement.

SECTION 15. IC 23-2-5-11, AS AMENDED BY P.L.48-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) The commissioner may do the following:

- (1) Adopt rules under IC 4-22-2 to implement this chapter.
- (2) Make investigations and examinations:
  - (A) in connection with any application for licensure or for registration of a licensee or registrant or with any license or certificate of registration already granted; or
  - (B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.
- (3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated this chapter.
- (4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under

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subdivision (2). The commissioner may also bring an action on behalf of the state to enjoin a person from violating this chapter. The commissioner shall notify the person that an order or notice has been issued, the reasons for it, and that a hearing will be set within fifteen (15) days after the commissioner receives a written request from the person requesting a hearing.

(5) Sign all orders, official certifications, documents, or papers issued under this chapter or delegate the authority to sign any of those items to a deputy.

(6) Hold and conduct hearings.

(7) Hear evidence.

(8) Conduct inquiries with or without hearings.

(9) Receive reports of investigators or other officers or employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

**(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:**

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**(A) processing applications for:**

- (i) licenses and certificates of registration under this chapter; and**
- (ii) renewals of licenses and certificates of registration under this chapter; and**

**(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing and registration system.**

**A multistate automated licensing system and repository described in this subdivision may include the National Mortgage Licensing System established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.**

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

- (1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and
- (2) the witness must answer the questions asked and produce the items requested.

A grant of use immunity does not prohibit evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(c) In any prosecution, action, suit, or proceeding based upon or arising out of this chapter, the commissioner may sign a certificate showing compliance or noncompliance with this chapter by any person.

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This shall constitute prima facie evidence of compliance or noncompliance with this chapter and shall be admissible in evidence in any action at law or in equity to enforce this chapter.

(d) If:

(1) a person disobeys any lawful:

(A) subpoena issued under this chapter; or

(B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) a witness refuses to:

(A) appear when subpoenaed;

(B) testify to any matter about which the witness may be lawfully interrogated; or

(C) take or subscribe to any oath required by this chapter;

the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

**(f) The commissioner's authority to designate a multistate automated licensing system and repository under subsection (a)(16) is subject to the following:**

**(1) The commissioner may not require any person exempt from licensure or registration under this chapter, or any employee or agent of an exempt person, to:**

**(A) submit information to; or**

**(B) participate in;**

**the multistate automated licensing system and repository.**

**(2) The commissioner may require a person required under this chapter to submit information to the multistate automated licensing system and repository to pay a processing fee considered reasonable by the commissioner.**

SECTION 16. IC 23-2-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) Each loan broker agreement shall be given an account number. Each licensee

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**person licensed or required to be licensed under this chapter** shall keep and maintain the following records or their electronic equivalent:

(1) A file for each borrower or proposed borrower that contains the following:

(A) The name and address of the borrower or any proposed borrower.

(B) A copy of the signed loan broker agreement.

(C) A copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower.

(D) If a loan was obtained for the borrower, the name and address of the creditor.

(E) If a loan is accepted by the borrower, a copy of the loan agreement.

(F) The amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.

(2) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

(3) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within thirty (30) days of the commissioner's request for the information.

(4) A sample of:

(A) all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical;

(B) scripts of any recording, radio, or television announcement; and

(C) any sales kits or literature;

to be used in solicitation of borrowers.

(b) The records listed in subsection (a) shall be kept for a period of two (2) years in the ~~licensee's~~ **loan broker's** principal office and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker.

**(c) If a breach of the security of any records:**

**(1) maintained by a loan broker under this section; and**

**(2) containing the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers;**

**occurs, the loan broker is subject to the disclosure requirements**

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under IC 24-4.9-3, unless the loan broker is exempt from the disclosure requirements under IC 24-4.9-3-4.

(d) A person who is:

(1) licensed or required to be licensed under this chapter; or  
 (2) registered or required to be registered under this chapter;  
 may not dispose of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers without first shredding, incinerating, mutilating, erasing, or otherwise rendering the information illegible or unusable.

SECTION 17. IC 23-2-5-19, AS AMENDED BY P.L.230-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

- (1) Any attorney while engaging in the practice of law.
- (2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).
- (3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.
- (4) (3) Any broker-dealer, agent, or investment advisor registered under IC 23-19.
- (5) (4) Any person that:
  - (A) procures;
  - (B) promises to procure; or
  - (C) assists in procuring;
 a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).
- (6) (5) Any community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from the Indiana housing and community development authority established by IC 5-20-1-3.
- (7) (6) The Indiana housing and community development authority.
- (8) Subject to subsection (e), and except as provided in subsection (f), any person authorized to:
  - (A) sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association;
  - (B) issue securities backed by the Government National

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Mortgage Association;

(C) make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service;

(D) act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or

(E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development; if the person closes at least twenty-five (25) such insured loans in Indiana during each calendar year.

(9) Any person who is a creditor; or proposed to be a creditor; for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

(e) A person claiming an exemption under subsection (a)(8) shall, as a condition to receiving or maintaining the exemption, file a notice every twenty-four (24) months on a form acceptable to the commissioner. The notice required under this subsection must:

(1) provide the name and business address of each originator employed by the person to originate loans in Indiana;

(2) include all other information required by the commissioner; and

(3) be accompanied by a fee of four hundred dollars (\$400);

If any information included in a notice under this subsection changes after the notice has been submitted, the person shall provide written notice to the commissioner of the change. The commissioner's receipt of a notice under this subsection shall not be considered to be a determination or confirmation by the commissioner of the validity of

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the claimed exemption:

(f) An exemption described in subsection (a)(8) does not extend to:

- (1) a subsidiary of the exempt person; or
- (2) an unaffiliated third party.

An exemption that applies to a person under subsection (a)(8)(D) does not extend to a registered United States Department of Veterans Affairs agent.

SECTION 18. IC 23-2-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. (a) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
- (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.
- (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.**
- (6) File or cause to be filed with a county recorder any document that the person knows:**
  - (A) contains:**
    - (i) a misstatement; or**
    - (ii) an untrue statement;**
  - of a material fact; or**
  - (B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.**
- (7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:**
  - (A) The personal information is:**
    - (i) included on an application form or another form; or**
    - (ii) transmitted as part of an application process or an enrollment process.**
  - (B) The personal information is used to obtain a consumer**

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report (as defined in IC 24-5-24-2) for an applicant for credit.

(C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(b) A person who commits an act described in subsection (a) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 19. IC 23-2-5-22, AS ADDED BY P.L.48-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. (a) An appeal may be taken by:

- (1) any ~~loan broker or principal upon person~~ whose application for ~~registration for a loan broker~~ **an initial or a renewal** license **under this chapter** is granted or denied, from any final order of the commissioner concerning the application; ~~or registration;~~
  - (2) any applicant for **initial or renewed** registration as a ~~loan broker principal manager or an~~ originator, from any final order of the commissioner affecting the application; ~~or registration as a loan broker or originator;~~
  - (3) any person against whom a civil penalty is imposed under section 14(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or
  - (4) any person who is named as a respondent, from any final order issued by the commissioner under section 10 or 11 of this chapter;
- to the Marion circuit court or to the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business.

(b) Not later than twenty (20) days after the entry of the order, the commissioner shall be served with:

- (1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

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- (2) a demand in writing from the appellant for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to the order; and
- (3) a bond in the penal sum of five hundred dollars (\$500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the commissioner is served with the items listed in subsection (b), the commissioner shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter. The commissioner is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days from the date the order is affirmed from filing a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

SECTION 20. IC 24-4.4 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

**ARTICLE 4.4. FIRST LIEN MORTGAGE LENDING**

**Chapter 1. General Provisions and Definitions**

**Sec. 101. This article shall be known and may be cited as the First Lien Mortgage Lending Act.**

**Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.**

**(2) The underlying purposes and policies of this article are:**

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- (a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and
- (b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, and regulations.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted under this article.

(4) A reference to a federal law in this article is a reference to the law in effect December 31, 2008.

**Sec. 103. This article:**

- (1) is a general act intended as a unified coverage of its subject matter; and
- (2) any part of this article may not be considered to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

**Sec. 104. The provisions of this article are severable, so that if:**

- (1) any provisions of this article; or
- (2) the application of this article to any person or circumstances;

is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application.

**Sec. 201. (1) Except as provided in subsection (2), this article applies to a first lien mortgage transaction:**

- (a) that is secured by an interest in land in Indiana; and
- (b) the closing for which takes place after December 31, 2008.

**(2) This article does not apply to a first lien mortgage transaction if:**

- (a) the debtor is not a resident of Indiana at the time the transaction is entered into; and
- (b) the laws of the debtor's state of residence requires that the transaction be made under the laws of the state of the debtor's residence.

**Sec. 202. This article does not apply to the following:**

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

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- (4) A first lien mortgage transaction made:
  - (a) in compliance with the requirements of; and
  - (b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from; the Indiana housing and community development authority established by IC 5-20-1-3.
- (5) A supervised financial organization.
- (6) An operating subsidiary that is majority owned, directly or indirectly, by a supervised financial organization to the extent the operating subsidiary is regulated by the chartering authority of the supervised financial organization.
- (7) A credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.
- (8) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises.

**Sec. 203.** Any civil court in Indiana may exercise jurisdiction over any creditor with respect to any conduct in Indiana governed by this article or with respect to any claim arising from a transaction subject to this article. In addition to any other method provided by rule or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in any civil court by the service of process.

**Sec. 301.** In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

- (1) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (2) "Creditor" means a person:
  - (a) that regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and
  - (b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person described in subsection (13)(a) in a tablefunded transaction.

- (3) "Department" refers to the members of the department of financial institutions.

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(4) "Director" refers to the director of the department of financial institutions.

(5) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(6) "First lien mortgage transaction" means a loan in which a first mortgage, or a land contract which constitutes a first lien, is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(7) "Loan" includes:

- (a) the creation of debt by:
  - (i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or
  - (ii) the extension of credit by a person who regularly engages as a seller in credit transactions primarily secured by an interest in land;
- (b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and
- (c) the forbearance of debt arising from a loan.

(8) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(9) "Person" includes an individual or an organization.

(10) A person is "regularly engaged" as a creditor in first lien mortgage transactions in Indiana if:

- (a) the person acted as a creditor in first lien mortgage transactions in Indiana more than five (5) times in the preceding calendar year; or
- (b) the person did not meet the numerical standards set forth in subdivision (a) in the preceding calendar year, but has or will meet the numerical standards set forth in subdivision (a) in the current calendar year.

(11) "Revolving first lien mortgage transaction" means an

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arrangement between a creditor and a debtor in which:

- (a) the creditor permits the debtor to obtain advances from time to time;
- (b) the unpaid balances of principal, credit service charges or loan finance charges, and other appropriate charges are debited to an account; and
- (c) the debtor has the privilege of paying the balances in installments.

(12) "Supervised financial organization" means a person that is:

- (a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States that authorizes the person to make loans and to receive deposits, including deposits into a savings, share, certificate, or deposit account; and
- (b) subject to supervision by an official or agency of a state or of the United States.

(13) "Tablefunded" means a transaction in which:

- (a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and
- (b) the transaction is assigned simultaneously to the mortgage creditor providing the funding not later than one (1) business day after the funding of the transaction.

## **Chapter 2. Miscellaneous**

**Sec. 101.** This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Miscellaneous.

**Sec. 201.** (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

- (a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and
- (b) the greater of:
  - (i) one hundred dollars (\$100); or
  - (ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until

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the date on which the accurate payoff amount is provided; if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

Sec. 301. (1) A violation of a state or federal law, regulation, or rule applicable to first lien mortgage transactions is a violation of this article.

(2) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to first lien mortgage transactions.

Sec. 401. Unless a person subject to this article has first obtained a license from the department, the person shall not regularly engage in Indiana as a creditor in first lien mortgage transactions. However, this article does not require an employee of a person that is licensed under this article to obtain a license to make a first lien mortgage loan.

Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage

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transactions. Applications must be made as prescribed by the director.

(2) A license may not be issued unless the department finds that the financial responsibility, character, and fitness of:

- (a) the applicant and any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

- (a) the time of application;
- (b) the time of renewal of a license; or
- (c) any other time considered necessary by the director.

(4) Evidence of compliance with this section may include:

- (a) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);
- (b) credit histories; and
- (c) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (a) for an individual described in subsection (2), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (3). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(5) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does

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not qualify for a license.

(6) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

(7) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) An annual renewal fee as established by the department under IC 28-11-3-5.

(c) Examination fees as established by the department under IC 28-11-3-5.

(8) A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee under subsection (7)(b) is delinquent.

(9) A license issued under this section is not assignable or transferable.

(10) Subject to subsection (11), the director may designate an automated central licensing system and repository, operated by a third party, to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this section; and

(b) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this article.

(11) The director's authority to designate an automated central licensing system and repository under subsection (10) is subject to the following:

(a) The director or the director's designee may not require any person exempt from licensure under this article, or any employee or agent of an exempt person, to:

(i) submit information to; or

(ii) participate in;

the automated central licensing system and repository.

(b) Information stored in the automated central licensing system and repository is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the automated central licensing system and repository, unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the automated central licensing system if the

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information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the automated central licensing system if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the automated central licensing system and repository that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the automated central licensing system and repository;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director or the director's designee may use the documents, materials, or other information available to the director or the director's designee in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director or the director's designee; or

(ii) by the director or the director's designee;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.

(f) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding; if the information may be obtained from the director or the director's designee under any law.

(g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

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**Sec. 403. (1)** A license issued by the department authorizing a person to engage in first lien mortgage transactions under this article may be revoked by the department if the person fails to:

- (a) file any renewal form required by the department; or
- (b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

**(2)** A person whose license is revoked under this section may do either of the following:

- (a) Pay all delinquent fees and apply for a new license.
- (b) Appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

**Sec. 404. (1)** The department may issue to a person licensed to engage in first lien mortgage transactions an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. The order must state the place and time for a meeting with the department that is not less than ten (10) days from the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

- (a) the licensee has repeatedly and willfully violated:
  - (i) this article or any rule or order lawfully adopted or issued under this article; or
  - (ii) any other state or federal law, regulation, or rule applicable to first lien mortgage transactions; or
- (b) facts or conditions exist which would clearly have justified the department in refusing to grant a license had the facts or conditions been known to exist at the time the application for the license was made.

**(2)** Except as provided in section 403 of this chapter, a revocation or suspension of a license is not authorized under this article unless before instituting proceedings to suspend or revoke the license, the department gives notice to the licensee of the conduct or facts that warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

**(3)** If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing with the licensee upon five (5)

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days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of the revocation or suspension. Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to engage in first lien mortgage transactions may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this paragraph does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) A revocation, suspension, or relinquishment of a license does not impair or affect the obligation of any preexisting lawful contract between:

- (a) the person whose license has been revoked, suspended, or relinquished; and
- (b) any debtor.

(7) The department may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if the director determines that, at the time the determination is made, there is no fact or condition that exists that clearly would justify the department in refusing to grant a license.

(8) If the director:

- (a) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or
  - (b) determines that a license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;
- the director may proceed with the revocation of the license under IC 4-21.5-3-6.

Sec. 405. (1) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee is complying with this article. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any first lien mortgage transaction shall be retained for two (2) years after the making of the final

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entry relating to the transaction, but in the case of a revolving first lien mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction.

(2) A licensee shall file with the department financial statements relating to all first lien mortgage transactions originated by the licensee. The licensee shall file the financial statements as required by the department, but not more frequently than annually, in the form prescribed by the department.

(3) A licensee shall file notification with the department if the licensee:

- (a) has a change in name, address, or any of its principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization; or
- (d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(4) A licensee shall file notification with the department if a key officer or director of the licensee:

- (a) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or
- (b) has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;

not later than thirty (30) days after the date of the event described in this subsection.

Sec. 501. A creditor in a first lien mortgage transaction shall comply with IC 6-1.1-12-43, to the extent applicable.

Sec. 502. (1) A violation by a creditor in a first lien mortgage transaction of Section 125 of the Federal Consumer Credit Protection Act (15 U.S.C. 1635) (concerning a debtor's right to rescind a transaction) constitutes a violation of this article. A creditor may not accrue interest during the period when a first lien mortgage transaction may be rescinded under Section 125 of the Federal Consumer Protection Act (15 U.S.C. 1635).

(2) A creditor must make available for disbursement the proceeds of a transaction subject to subsection (1) on the later of:

- (a) the date the creditor is reasonably satisfied that the debtor

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has not rescinded the transaction; or

(b) the first business day after the expiration of the rescission period under subsection (1).

### **Chapter 3. Administration**

**Sec. 101.** This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Administration.

**Sec. 102.** This chapter applies to a person that regularly engages as a creditor in first lien mortgage transactions in Indiana.

**Sec. 103. (1)** In addition to other powers granted by this article, the department within the limitations provided by law may:

(a) receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the department's own initiative;

(b) counsel persons and groups on their rights and duties under this article;

(c) establish programs for the education of consumers with respect to credit practices and problems;

(d) make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public;

(e) adopt, amend, and repeal rules, orders, policies, and forms to carry out the provisions of this article;

(f) maintain more than one (1) office within Indiana; and

(g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the department in court.

**(2)** Liability may not be imposed under this article for an act done or omitted in conformity with a rule, written notice, written opinion, written interpretation, or written directive of the department notwithstanding the fact that after the act is done or omitted the rule, written notice, written opinion, written interpretation, or written directive may be:

(a) amended or repealed; or

(b) determined by judicial or other authority to be invalid; for any reason.

**Sec. 104. (1)** In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section

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include the following:

- (a) Training, operating, and policy manuals.
- (b) Minutes of:
  - (i) management meetings; and
  - (ii) other meetings.
- (c) Financial records, credit files, and data bases.
- (d) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena witnesses, compel the attendance of witnesses, adduce evidence, and require the production of any matter that is relevant to an investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records concerning any transaction subject to this article shall be retained for two (2) years after the making of the final entry relating to the first lien mortgage transaction, but in the case of a revolving first lien mortgage transaction the two (2) year period is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

- (a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a first lien mortgage transaction.
- (b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.4-2-201.
- (c) The authority to investigate complaints filed with the department by debtors.

(3) The department shall be given free access to the records wherever the records are located. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect the records on behalf of the department.

(4) Upon a person's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice by the department to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

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**(5) The department shall not make public:**

- (a) the name or identity of a person whose acts or conduct the department investigates under this section; or**
- (b) the facts discovered in the investigation.**

**However, this subsection does not apply to civil actions or enforcement proceedings under this article.**

**Sec. 105. Except as otherwise provided, IC 4-21.5-3 governs any action taken by the department under this chapter or IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the adoption of rules by the department under this article. However, if the department determines that an emergency exists, the department may adopt any rules authorized by this article under IC 4-22-2-37.1.**

**Sec. 106. (1) After notice and hearing, the department may order a creditor or a person acting on the creditor's behalf to cease and desist from engaging in violations of this article. In any civil court with jurisdiction:**

- (a) a respondent aggrieved by an order of the department may obtain judicial review of the order; and**
- (b) the department may obtain an order of the court for the enforcement of the department's order.**

**A proceeding for review or enforcement under this subsection shall be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.**

**(2) Not later than thirty (30) days after service of a petition for review upon the department under subsection (1), or within such further time as the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order that is the subject of the review is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After conducting a hearing on the matter, the court may:**

- (a) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record;**
- (b) grant any temporary relief or restraining order the court considers just; and**
- (c) enter an order:**
  - (i) enforcing;**
  - (ii) modifying;**
  - (iii) enforcing as modified; or**

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- (iv) setting aside;  
in whole or in part, the order of the department; or
- (d) enter an order remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of:

- (a) adducing additional specified and material evidence; and
- (b) seeking a finding upon such evidence;

upon good cause shown for the failure to previously adduce this evidence before the department.

(4) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:

- (a) the order was issued in compliance with this section;
- (b) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and
- (c) the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 111 of this chapter.

**Sec. 107.** If it is claimed that a person has engaged in conduct subject to an order by:

- (a) the department under section 106(1) of this chapter; or
- (b) a court under sections 108 through 110 of this chapter;

the department may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with the terms of the assurance, the assurance is evidence that before the assurance was issued the person engaged in the conduct described in the assurance.

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**Sec. 108.** The department may bring a civil action to restrain a person from violating this article and for other appropriate relief.

**Sec. 109. (1)** As used in this section, "deceptive act" means an act or a practice in which a person knowingly or intentionally:

- (a) makes a material misrepresentation concerning; or
- (b) conceals material information regarding the terms or conditions of;

a first lien mortgage transaction.

(2) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.

(3) The department may bring a civil action to enjoin a deceptive act performed in connection with a first lien mortgage transaction.

**Sec. 110.** With respect to an action brought under:

- (a) section 108 of this chapter to enjoin violations of this article; or
- (b) section 109 of this chapter to enjoin deceptive acts;

the department may apply to the court for appropriate temporary relief against a respondent, pending final determination of the proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in the conduct sought to be restrained, the court may grant any temporary relief or restraining order the court considers appropriate.

**Sec. 111. (1)** The department may bring a civil action against a creditor or a person acting on the creditor's behalf to recover a civil penalty for willfully violating this article. If the court finds that the defendant has engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars (\$5,000). A civil penalty may not be imposed under this subsection:

- (a) for violations of this article occurring more than two (2) years before the action is brought; or
- (b) for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(2) If the department determines, after notice and opportunity for hearing, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

**Sec. 112.** In an action brought by the department under this article, the defendant does not have a right to trial by a jury.

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**Sec. 113. The grant of powers to the department under this article does not affect remedies available to debtors under this article or under other principles of law or equity.**

**Sec. 114. The department may bring an action or a proceeding in a court in a county:**

- (1) in which an act on which the action or proceeding is based occurred;**
- (2) in which the respondent resides or transacts business; or**
- (3) in which the action or proceeding is otherwise authorized by rule or venue laws.**

**Sec. 115. As used in this article, "civil court" means any court in Indiana having jurisdiction of civil cases.**

SECTION 21. IC 24-4.5-1-301, AS AMENDED BY P.L.57-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 301. General Definitions — In addition to definitions appearing in subsequent chapters in this article:

(1) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(2) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products; "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(3) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(4) "Closing costs" with respect to a debt secured by an interest in land includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) credit reports.

(5) "Conspicuous": A term or clause is conspicuous when it is so

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written that a reasonable person against whom it is to operate ought to have noticed it.

(6) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable **by written agreement in more than four (4) installments (not including a down payment)**; and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(9) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(10) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

(11) "Official fees" means:

- (a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or
- (b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(12) "Organization" means a corporation, a government or governmental subdivision, or an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, or an

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association.

(13) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(14) "Person" includes a natural person or an individual and an organization.

(15) "Person related to" with respect to an individual means:

- (a) the spouse of the individual;
- (b) a brother, brother-in-law, sister, **or** sister-in-law of the individual;
- (c) an ancestor or lineal descendants of the individual or the individual's spouse; and
- (d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- (c) the spouse of a person related to the organization; and
- (d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(17) "Mortgage transaction" means a transaction in which a first mortgage or a land contract which constitutes a first lien is created or retained against land.

(18) "Regularly engaged" means a person who extends consumer credit more than:

- (a) twenty-five (25) times; or
- (b) five (5) times for transactions secured by a dwelling;

in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(19) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a

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card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

- (a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and
- (b) subject to supervision by an official or agency of a state or of the United States.

(21) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(22) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

- (a) controls;
- (b) is controlled by; or
- (c) is under common control with;

the person subject to this article.

SECTION 22. IC 24-4.5-2-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definition; "Seller" - Except as otherwise provided, "seller" **means a person regularly engaged as a creditor in making consumer credit sales.** The term includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

SECTION 23. IC 24-4.5-2-201, AS AMENDED BY P.L.57-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts — (1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

- (a) the total of:
  - (i) thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is three hundred

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dollars (\$300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than one thousand dollars (\$1,000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed:

(a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-2-210).

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed more than thirty (30) days after that date, with the date of commencement of delivery or performance except as set forth below:

(a) Delays attributable to the customer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale agreement shall commence with the date credit is granted.

Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same credit service charge on all amounts financed within a specified range. A credit

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service charge so made does not violate subsection (2) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars (\$30). The minimum credit service charge allowed under this subsection may be imposed only if:

- (a) the ~~borrower~~ **debtor** prepays in full a consumer credit sale, refinancing, or consolidation, regardless of whether the sale, refinancing, or consolidation is precomputed;
- (b) the sale, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a credit service charge that:
  - (i) is contracted for by the parties; and
  - (ii) does not exceed the rate prescribed in subsection (2); and
- (c) the credit service charge earned at the time of prepayment is less than the minimum credit service charge contracted for under this subsection.

(7) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

(8) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

SECTION 24. IC 24-4.5-2-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

(2) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (IC 24-4.5-2-210), the total credit service charge, including the prepaid credit service charge, may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer credit sale to the debtor within ten (10)

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calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

**(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a**

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**transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.**

SECTION 25. IC 24-4.5-3-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definitions: "Lender"; "Precomputed"; "Principal" — (1) Except as otherwise provided, "lender" **means a person regularly engaged in making consumer loans. The term** includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

- (a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;
- (b) the amount of any discount excluded from the loan finance charge (subsection (2) of IC 24-4.5-3-109); and
- (c) to the extent that payment is deferred:
  - (i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and
  - (ii) additional charges permitted by this chapter (IC 24-4.5-3-202).

SECTION 26. IC 24-4.5-3-201, AS AMENDED BY P.L.57-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Loan Finance Charge for Consumer Loans other than Supervised Loans—(1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-one percent (21%) per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

- (a) the loan finance charge may be calculated on the assumption

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that all scheduled payments will be made when due; and  
 (b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth ( $1/30$ ) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account:

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is one and three-fourths percent ( $1\frac{3}{4}\%$ ) of an amount no greater than:

- (i) the average daily balance of the debt;
- (ii) the unpaid balance of the debt on the same day of the billing cycle; or
- (iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth ( $1/12$ ) the maximum annual percentage rate as the number of days in the billing cycle bears to thirty (30); and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents (\$0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$0.50) which bears the same relation to fifty cents (\$0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no

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charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of IC 24-4.5-3-202).

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

- (a) the **borrower debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;
- (b) the loan, refinancing, or consolidation prepaid by the **borrower debtor** is subject to a loan finance charge that:
  - (i) is contracted for by the parties; and
  - (ii) does not exceed the rate prescribed in subsection (1); and
- (c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

(7) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) In addition to the loan finance charge provided for in this section, a lender may contract for the following:

- (a) With respect to a consumer loan that is not made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the loan amount.
- (b) With respect to a consumer loan that is made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the line of credit that was contracted for.

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- (9) The charges provided for in subsection (8):
- (a) are not subject to refund or rebate;
  - (b) are not permitted if a lender makes a settlement charge under IC 24-4.5-3-202(d)(ii); and
  - (c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars (\$2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line and the increased credit line. This subsection does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyance, and similar documents under IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in subsection (8).

SECTION 27. IC 24-4.5-3-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

- (a) if the loan is refinanced or consolidated with the same creditor;
- (b) for prepayment by proceeds of any insurance or acceleration after default; or
- (c) after three (3) years from the contract date.

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under IC 24-4.5-3-201, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

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(a) The loan origination fee allowed under IC 24-4.5-3-201.

(b) The ~~borrower~~ **debtor** paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer loan to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with subdivision (a).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

**(4) As used in this subsection, "mortgage transaction" means a consumer credit loan in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third**

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party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 28. IC 24-4.5-3-508, AS AMENDED BY P.L.57-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 508. Loan Finance Charge for Supervised Loans – (1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

- (a) the total of:
  - (i) thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is three hundred dollars (\$300) or less;
  - (ii) twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000); and
  - (iii) fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than one thousand dollars (\$1000); or
- (b) twenty-one percent (21%) per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

- (a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and
- (b) the effect of prepayment is governed by the provisions on

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rebate upon prepayment (IC 24-4.5-3-210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) and thirty dollars (\$30) in subsection (7) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of thirty dollars (\$30), the Reference Base Index to be used is the Index for October 1992.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

- (a) the ~~borrower~~ **debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;
- (b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a loan finance charge that:
  - (i) is contracted for by the parties; and
  - (ii) does not exceed the rate prescribed in subsection (2); and
- (c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

SECTION 29. IC 24-9-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 6. (a) A creditor

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may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide a payoff balance not later than ten (10) ~~business calendar~~ days after the request is received by the creditor. ~~(b)~~ For purposes of this ~~section~~, **subsection**, "fee" does not include actual charges incurred by a creditor for express or priority delivery ~~requested by the borrower~~ of home loan documents to the borrower **if such delivery is requested by the borrower.**

**(b) This subsection applies to a home loan with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.**

SECTION 30. IC 25-34.1-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. **(a)** To be licensed or certified as a real estate appraiser, an individual must meet the following conditions:

- (1) Not have a conviction for any of the following:
  - (A) An act that would constitute a ground for disciplinary sanction under IC 25-1-11.
  - (B) A crime that has a direct bearing on the individual's ability to practice competently.
  - (C) Fraud or material deception in the course of professional services or activities.
  - (D) A crime that indicates the individual has the propensity to endanger the public.

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(2) Have satisfied the requirements established under IC 25-34.1-3-8(f).

(b) After December 31, 2008, the board shall require each applicant for initial licensure or certification under this chapter to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the board in determining whether the applicant should be denied licensure or certification under this chapter for any reason set forth in subsection (a)(1). The applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The board may not release the results of a background check described in this subsection to any private entity.

(c) The board may request evidence of compliance with this section in accordance with subsection (d). Evidence of compliance with this section may include any of the following:

(1) Subject to subsections (b) and (d)(2), criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.

(2) Credit histories.

(3) Other background checks considered necessary by the board.

(d) The board may request evidence of compliance with this section at any of the following times:

(1) The time of application for an initial license or certificate.

(2) The time of renewal of a license or certificate.

(3) Any other time considered necessary by the board.

(e) The commission, upon recommendation of the board, shall adopt rules under IC 4-22-2 to implement this section.

SECTION 31. IC 27-7-3-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.5. (a) This section applies to a transaction that:**

(1) is a single family residential:

(A) first lien purchase money mortgage transaction; or

(B) refinancing transaction; and

(2) is closed after December 31, 2009.

(b) Not later than September 1, 2009, the department shall establish and maintain an electronic system for the collection and storage of the following information concerning any of the following persons that have participated in or assisted with a

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transaction to which this section applies, or that will participate in or assist with a transaction to which this section applies:

(1) The name and license number (under IC 23-2-5) of each loan brokerage business involved in the transaction.

(2) The name and registration number (under IC 23-2-5) of each originator involved in the transaction.

(3) The name and license number (under IC 25-34.1) of each:

(A) principal broker; and

(B) salesperson or broker-salesperson, if any; involved in the transaction.

(4) The:

(A) name of; and

(B) code assigned by the National Association of Insurance Commissioners (NAIC) to;

each title insurance underwriter involved in the transaction.

(5) The name and license number (under IC 27-1-15.6) of each title insurance agency and agent involved in the transaction as a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

(6) The name and:

(A) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or

(B) license number (under IC 25-34.1) of each broker; who appraises the property that is the subject of the transaction.

(7) The name of the mortgagee and, if the mortgagee is required to be licensed under:

(A) IC 24-4.4; or

(B) IC 24-4.5-3-502;

the license number of the mortgagee.

(c) The system established by the department under this section must include a form that:

(1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to do the following:

(A) Input information identifying the property that is the subject of the transaction by lot or parcel number, street address, or some other means of identification that the department determines:

(i) is sufficient to identify the property; and

(ii) determinable by the closing agent.

(B) Subject to subsection (d) and to the extent

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determinable, input the information described in subsection (b) with respect to each person described in subsection (b) that participates in or assists with the transaction.

(C) Respond to the following questions:

(i) "On what date did you receive the closing instructions from the creditor in the transaction?".

(ii) "On what date did the transaction close?".

(D) Submit the form electronically to a data base maintained by the department.

(d) Not later than the time of the closing, each person described in subsection (b) shall provide to the closing agent in the transaction the person's:

(1) legal name; and

(2) license number, certificate number, registration number, or NAIC code, as appropriate;

to allow the closing agent to comply with subsection (c)(2)(B). A person described in subsection (b)(7) shall provide the information required by this subsection for any person described in subsection (b)(6) that appraises the property that is the subject of the transaction on behalf of the person described in subsection (b)(7). A person described in subsection (b)(3)(B) who is involved in the transaction may provide the information required by this subsection for a person described in subsection (b)(3)(A) that serves as the principal broker for the person described in subsection (b)(3)(B).

(e) A person described in subsection (b) who fails to comply with subsection (d) is subject to a civil penalty of one hundred dollars (\$100) for each closing with respect to which the person fails to comply with subsection (d). The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the person in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(f) Subject to subsection (g), the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

(1) each entity described in IC 4-6-12-4; and

(2) the homeowner protection unit established under IC 4-6-12-2.

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(g) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

- (1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and
- (2) contained in the data base described in subsection (c)(2)(D);

except to the extent required or authorized by state or federal law.

(h) The department may adopt rules under IC 4-22-2 to implement this section. Rules adopted by the department under this subsection may establish procedures for the department to:

- (1) establish;
- (2) collect; and
- (3) change as necessary;

an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section.

(i) If the department adopts a rule under IC 4-22-2 to establish an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section, as allowed under subsection (h), the department may:

- (1) require the fee to be paid:
  - (A) to the closing agent responsible for inputting the information and submitting the form described in subsection (c)(2); and
  - (B) by the borrower in the transaction;
- (2) allow the closing agent described in subdivision (1)(A) to retain a part of the fee collected to cover the closing agent's costs in inputting the information and submitting the form described in subsection (c)(2); and
- (3) require the closing agent to pay the remainder of the fee collected to the department for deposit in the title insurance enforcement fund established by IC 27-7-3.6-1, for the department's use in establishing and maintaining the electronic system required by this section.

SECTION 32. IC 27-7-3.6-1, AS ADDED BY P.L.171-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The title insurance enforcement fund is established for the following purposes:

- (1) To provide supplemental funding for department operations

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that are related to title insurance, **including any of the following:**

**(A) The investigation of any matter concerning title insurance transactions in Indiana, to the extent necessary to determine compliance with this title.**

**(B) Appropriate administrative and civil actions to redress instances of noncompliance with this title.**

**(C) Cooperative efforts with federal, state, and local law enforcement agencies in investigating the following:**

**(i) Deceptive acts in connection with title insurance transactions.**

**(ii) Criminal violations involving deceptive acts in connection with title insurance transactions.**

**(iii) Violations of the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) and any other federal laws or regulations concerning title insurance transactions. To the extent authorized by federal law, the department may enforce compliance with the federal statutes or regulations described in this item or refer suspected violations of the statutes or regulations to the appropriate federal regulatory agencies.**

**(D) Actions to enjoin violations of 12 U.S.C. 2607, as permitted under 12 U.S.C. 2607(d) and 12 U.S.C. 2614.**

**(2) To pay the costs of hiring and employing staff in the area of enforcement of title insurance law.**

**(3) To provide funding for educational materials or services designed to provide information to consumers about residential title insurance transactions.**

SECTION 33. IC 34-55-10-2, AS AMENDED BY P.L.179-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) This section does not apply to judgments obtained before October 1, 1977.

(b) The amount of each exemption under subsection (c) applies until a rule is adopted by the department of financial institutions under section 2.5 of this chapter.

(c) The following property of a debtor domiciled in Indiana is exempt:

(1) Real estate or personal property constituting the personal or family residence of the debtor or a dependent of the debtor, or estates or rights in that real estate or personal property, of not more than fifteen thousand dollars (\$15,000). The exemption under this subdivision is individually available to joint debtors concerning property held by them as tenants by the entireties.

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(2) Other real estate or tangible personal property of eight thousand dollars (\$8,000).

(3) Intangible personal property, including choses in action, deposit accounts, and cash (but excluding debts owing and income owing), of three hundred dollars (\$300).

(4) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(5) Any interest that the debtor has in real estate held as a tenant by the entireties. The exemption under this subdivision does not apply to a debt for which the debtor and the debtor's spouse are jointly liable.

(6) An interest, whether vested or not, that the debtor has in a retirement plan or fund to the extent of:

(A) contributions, or portions of contributions, that were made to the retirement plan or fund by or on behalf of the debtor or the debtor's spouse:

(i) which were not subject to federal income taxation to the debtor at the time of the contribution; or

(ii) which are made to an individual retirement account in the manner prescribed by Section 408A of the Internal Revenue Code of 1986;

(B) earnings on contributions made under clause (A) that are not subject to federal income taxation at the time of the levy; and

(C) roll-overs of contributions made under clause (A) that are not subject to federal income taxation at the time of the levy.

(7) Money that is in a medical care savings account established under IC 6-8-11.

**(8) Money that is in a health savings account established under Section 223 of the Internal Revenue Code of 1986.**

~~(8)~~ (9) Any interest the debtor has in a qualified tuition program, as defined in Section 529(b) of the Internal Revenue Code of 1986, but only to the extent funds in the program are not attributable to:

(A) excess contributions, as described in Section 529(b)(6) of the Internal Revenue Code of 1986, and earnings on the excess contributions;

(B) contributions made by the debtor within one (1) year before the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the contributions; or

(C) the excess over five thousand dollars (\$5,000) of aggregate

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contributions made by the debtor for all programs under this subdivision and education savings accounts under subdivision ~~(9)~~ **(10)** having the same designated beneficiary:

- (i) not later than one (1) year before; and
- (ii) not earlier than two (2) years before;

the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the aggregate contributions.

~~(9)~~ **(10)** Any interest the debtor has in an education savings account, as defined in Section 530(b) of the Internal Revenue Code of 1986, but only to the extent funds in the account are not attributable to:

(A) excess contributions, as described in Section 4973(e) of the Internal Revenue Code of 1986, and earnings on the excess contributions;

(B) contributions made by the debtor within one (1) year before the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the contributions; or

(C) the excess over five thousand dollars (\$5,000) of aggregate contributions made by the debtor for all accounts under this subdivision and qualified tuition programs under subdivision

~~(8)~~ **(9)** having the same designated beneficiary:

- (i) not later than one (1) year before; and
- (ii) not earlier than two (2) years before;

the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the excess contributions.

~~(10)~~ **(11)** The debtor's interest in a refund or a credit received or to be received under section 32 of the Internal Revenue Code of 1986.

(d) A bankruptcy proceeding that results in the ownership by the bankruptcy estate of a debtor's interest in property held in a tenancy by the entirety does not result in a severance of the tenancy by the entirety.

(e) Real estate or personal property upon which a debtor has voluntarily granted a lien is not, to the extent of the balance due on the debt secured by the lien:

- (1) subject to this chapter; or
- (2) exempt from levy or sale on execution or any other final process from a court.

SECTION 34. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2008]: IC 5-20-1-5; IC 5-20-1-6.

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**SECTION 35. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "task force" refers to the mortgage lending and fraud prevention task force created under subsection (b).**

**(b) Not later than May 1, 2008, the following agencies shall create the mortgage lending and fraud prevention task force by each appointing an equal number of representatives to serve on the task force:**

- (1) The securities division of the office of the secretary of state established under IC 23-19-6-1(a).**
- (2) The homeowner protection unit established by the attorney general under IC 4-6-12-2.**
- (3) The department of financial institutions established by IC 28-11-1-1.**
- (4) The department of insurance created by IC 27-1-1-1.**
- (5) The Indiana real estate commission created by IC 25-34.1-2-1.**
- (6) The real estate appraiser licensure and certification board created by IC 25-34.1-8-1.**

**(c) The members of the task force shall annually appoint a chair from among the members of the task force. Each year, the chair shall rotate among the agencies set forth in subsection (b).**

**(d) Subject to subsection (e), beginning not later than July 2008, the task force shall meet each month to:**

- (1) coordinate the state's efforts to:**
  - (A) regulate the various participants involved in originating, issuing, and closing home loans;**
  - (B) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and**
  - (C) prevent fraudulent practices in the home loan industry; and**
- (2) share information and resources necessary for the efficient administration of the tasks set forth in subdivision (1), unless prohibited by law.**

**(e) With respect to any meeting of the task force:**

- (1) one (1) or more members of the task force may participate in the meeting; or**
- (2) the meeting may be conducted in its entirety;**

**by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other. Participation by the means described in this subsection constitutes presence in person at the meeting.**

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(f) Beginning in 2008, not later than November 1 of each year, the task force shall report to the legislative council on the activities of each agency comprising the task force under subsection (b) with respect to the most recent state fiscal year. The report required under this subsection must include:

(1) information on the regulatory activities of each agency described in subsection (b), including a description of any:

- (A) disciplinary or enforcement actions taken;
- (B) criminal prosecutions pursued;
- (C) rules adopted;
- (D) policies issued; or
- (E) legislative recommendations made;

concerning the professions involved in originating, issuing, and closing home loans;

(2) a description of any challenges:

- (A) encountered by the task force during the most recent state fiscal year; or
- (B) anticipated by the task force in the current state fiscal year;

in carrying out the duties set forth in subsection (d);

(3) any additional information required by the legislative council; and

(4) any recommendations by the task force for legislation necessary to assist the task force in carrying out the duties set forth in subsection (d).

A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

SECTION 36. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "authority" refers to the Indiana housing and community development authority created by IC 5-20-1-3.

(b) As used in this SECTION, "mortgage transaction" refers to a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).

(c) Not later than November 1, 2008, the authority shall provide a report to the legislative council that includes the following:

(1) An identification of:

- (A) new sources of funding that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions; or
- (B) existing sources of funding that can be directed or redirected to assist Indiana homeowners in refinancing their existing mortgage transactions;

in order to prevent the foreclosure of the homes secured by

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homeowners' existing mortgage transactions.

(2) A plan for the rehabilitation of neighborhoods or communities in Indiana that have been adversely or disproportionately affected by mortgage foreclosures. The plan required by this subdivision must include an identification of the following:

(A) The areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures, including any statistics or data used to identify the areas.

(B) New or existing sources of funding that can be directed or redirected to the proposed rehabilitation efforts.

(3) Any recommendations for legislation that the authority determines is needed to accomplish the objectives described in subdivisions (1) and (2).

(4) Any other recommendations of the authority concerning:

(A) the prevention of mortgage foreclosures; or

(B) the rehabilitation of neighborhoods or communities adversely or disproportionately affected by mortgage foreclosures.

(d) The report to the legislative council required by this SECTION must be in an electronic format under IC 5-14-6.

(e) This SECTION expires January 1, 2010.

SECTION 37. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1.

(b) As used in this SECTION, "director" refers to the director of the department of financial institutions appointed under IC 28-11-2-1.

(c) The commissioner and the director shall cooperate to determine the appropriate state agency or department to oversee the regulation of a person that is, has been, or may be subject to regulation, licensure, or registration under both:

(1) IC 23-2-5; and

(2) IC 24-4.4, as added by this act.

(d) The commissioner and the director shall issue joint guidelines to address the appropriate regulation of a person described in subsection (c) not later than September 1, 2008. The joint guidelines issued under this subsection must include any recommendations for legislation needed to implement the appropriate regulation of a person described in subsection (c), as determined by the commissioner and the director.

(e) This SECTION expires January 1, 2010.

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**SECTION 38. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "board" refers to the real estate appraiser licensure and certification board created by IC 25-34.1-8-1.**

**(b) As used in this SECTION, "commission" refers to the Indiana real estate commission created by IC 25-34.1-2-1.**

**(c) Notwithstanding IC 25-34.1-8-10(e), as added by this act, the commission shall adopt rules to implement IC 25-34.1-8-10, as amended by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Not later than July 1, 2008, the board shall make recommendations to the commission concerning the rules needed to implement IC 25-34.1-8-10, as amended by this act. The commission shall adopt any emergency rules under this SECTION not later than December 1, 2008. An emergency rule adopted under this SECTION:**

**(1) takes effect on January 1, 2009; and**

**(2) expires on the earlier of:**

**(A) the date the rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36; or**

**(B) January 1, 2010.**

**(d) This SECTION expires January 1, 2010.**

**SECTION 39. An emergency is declared for this act.**

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\_\_\_\_\_  
Speaker of the House of Representatives

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President of the Senate

\_\_\_\_\_  
President Pro Tempore

\_\_\_\_\_  
Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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